

NTSB Order No. EA-4544

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 30<sup>th</sup> day of April, 1997

Respondent .

Docket SE-14317

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on April 24, 1996, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 61.15(d).<sup>2</sup> The law judge, however, reduced

<sup>2</sup> Section 61.15(d) provides:

the Administrator's 120-day proposed suspension to one of 90 days.<sup>3</sup> We deny the appeal.

On or about June 15, 1993, respondent's driver's license was suspended by California for driving with excess blood alcohol. On or about July 19, 1994, his license was revoked by Hawaii for a chemical test refusal. The Notice of Proposed Certificate Action (NOPCA) was issued on April 11, 1995.

On appeal, respondent argues, first, that the complaint must be dismissed as stale because he informed the FAA of the second conviction on August 24, 1994, 8 months before the NOPCA was issued. Respondent next argues that, because there is no sanction guideline published by the FAA and arguably no sanction precedent, a civil penalty should have been imposed instead. Neither argument has merit.

The Administrator's charges are not dismissed as stale (i.e., more than 6 months after the event, see 49 C.F.R. 821.33) where the Administrator had good cause for the delay. We agree with the law judge that good cause existed here. In his reply to

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(continued...)

(d) Except in the case of a motor vehicle action that results from the same incident or arises out of the same factual circumstances, a motor vehicle action occurring within 3 years of a previous motor vehicle action is grounds for-

(1) denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the last motor vehicle action; or

(2) suspension or revocation of any certificate or rating issued under this part.

<sup>3</sup> The Administrator has not appealed this sanction reduction.

the motion to dismiss, the Administrator explained the delay: he had difficulty obtaining copies of the relevant documents from the State of Hawaii. We will not say, as respondent urges, that this was an unnecessary exercise, especially as, at the time, the Administrator had no reason to assume that respondent would admit the charges at trial and the Administrator was obliged to gather evidence prior to initiation of the formal proceeding. We see no undue delay in the process. Further, the purpose of the stale complaint rule is to ensure that respondents are not denied the opportunity to prepare a defense as a result of the Administrator's tardiness in giving notice. There is no showing here, nor even an allegation, that this was the case.

Respondent's arguments regarding the sanction itself are equally unpersuasive. The Administrator is not obliged to detail the sanction for every offense in his sanction guidance table.<sup>4</sup> Nor, as respondent appears to acknowledge, is revocation of his driving privileges an event that adequately addresses the safety of flight. The FAA is fully justified in sanctioning non-flying conduct that raises aviation safety concerns. Certainly, respondent's driving-related convictions implicate air safety.

We see no error in the 90-day suspension imposed by the law judge. Notwithstanding the economic consequences to respondent (factors respondent notes we traditionally decline to consider),

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<sup>4</sup> The existence of written sanction guidance available to the public affects whether this Board need defer to the Administrator's proposed sanction, but it is not a prerequisite to sanction. 49 U.S.C. 44703(c)(2).

these two incidents warrant sanction beyond a simple fine.<sup>5</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 90-day suspension of respondent's airman and flight instructor certificates shall begin 30 days from service of this order.<sup>6</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>5</sup> This conclusion is confirmed by the fact that respondent was fined in 1993 for failure to report the first driving violation.

<sup>6</sup> For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).